

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE No. 515177 and
MERCHANT MARINER'S DOCUMENT No. 263-70-2012
Issued to: Harvey A. GEWANT

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2397

Harvey A. GEWANT

This appeal has been taken in accordance with 46 CFR 5.30-15.

By order dated 27 March 1985, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's seaman's license and document upon finding proved a charge of misconduct. The charge was supported by two specifications which alleged that Appellant, on or about 15 January 1984, on board the M/V GOLDEN MOON wrongfully had in his possession marijuana and, at the same time and place, wrongfully had in his possession a pistol.

On 10 April 1985, Appellant filed a notice of appeal and requested a temporary license and document pending appeal. The Administrative Law Judge denied the request by order dated 12 April 1985.

BASES OF APPEAL

This appeal has been taken from the denial of a temporary license and document. Appellant urges the following:

1. Appellant should be allowed a temporary license and document because to deny him these would put his career in jeopardy;

2. The decision on the merits by the Administrative Law Judge is in error and, therefore, the decision denying a temporary license and document which is based on the decision on the merits is also in error; and

3. The fact that Appellant had worked for several years prior to the incident, that he was working at the time of the proceedings and that he has no other Coast Guard offenses indicate that his service on board a vessel is compatible with the requirements for safety of life and property at sea.

APPEARANCE: Andrew A. Lemeschewsky, Jr., Esq., 305 Baronne St., New

Orleans, Louisiana.

OPINION

I

Appellant asserts that the hardship which denial of a temporary license and document will cause him is reason to grant him that document. I do not agree.

Loss of a license or document often places the career of the mariner involved in jeopardy. It is to prevent such hardship that temporary licenses and documents are permitted where the mariner involved would not pose a hazard to the safety of life and property at sea if allowed to serve aboard a vessel during the time that his appeal pends. In this respect, this case is no different than most cases involving denial of a temporary license or document. Consequently, the hardship on Appellant of not having a temporary license and document does not provide a greater reason to grant it in this case than in other cases.

II

Appellant urges that errors in the underlying Decision and Order on the merits provide cause to reverse the Administrative Law Judge's order denying the temporary license and document. I do not agree.

In support of his argument, Appellant urges that the Administrative Law Judge, in the Decision and Order on the merits, misinterpreted various items of evidence presented at the hearing. Appellant further states that he intends to more fully detail these errors after reviewing the transcript.

Since the transcript of the hearing has not yet been prepared, Appellant is unable to fully document his assertions and I am unable to evaluate them. Delay of this decision until such time as the transcript has been prepared and Appellant's brief submitted, would delay a decision with respect to issuance of a temporary license and document until a decision on the merits could also be rendered. Such a delay would render the expedited appeal procedure used when a temporary license or document is denied of little or no value. Consequently, in ruling on this appeal from denial of a temporary license and document, I must assume that the Decision and Order on the merits was properly rendered.

Appellant's assertions with respect to the Decision and Order on the merits will, of course, be considered at such time as the

transcript has been prepared and his brief in support of his appeal submitted.

III

Appellant urges that his employment prior to and at the time of the hearing, and the lack of previous offenses in his Coast Guard record qualify him for a temporary license and document. I do not agree.

Appellant's employment record and lack of prior Coast Guard offenses are matters for consideration by the Administrative Law Judge in deciding whether or not to grant a temporary license and document. They are, however, by themselves, not determinative of the issue. In cases, such as this, where an individual is found to be wrongfully in possession of drugs and dangerous weapons aboard ship, an Administrative Law Judge's determination that he would be a hazard to the safety of life and property at sea is not unreasonable. The decision here is further supported by the evidence of other drug involvement, although not involving a vessel.

The fact that Appellant has no other Coast Guard offenses is a factor in his favor. However, it does not render the denial of the temporary license and document unreasonable in this case.

CONCLUSION

Appellant has not established sufficient cause to disturb the order of the Administrative Law Judge denying him a temporary license and document.

ORDER

The order of the Administrative Law Judge denying Appellant a temporary license and document dated at Houston, Texas, on 12 April 1985 is AFFIRMED.

B. L. STABILE
VICE ADMIRAL, U.S. COAST GUARD
ACTING COMMANDANT

Signed this 15th day of July 1985.